

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

THE UNITED STATES for the use of)
GMW Fire Protection, Inc., an Alaska)
Corporation,)
Plaintiff,)
vs.)
KANAG'IQ CONSTRUCTION CO.,)
INC., an Alaska Corporation, and)
WESTERN SURETY COMPANY, a)
South Dakota Corporation,)
Defendants.) Case No. A05-170 CI (TMB)

MEMORANDUM IN SUPPORT OF MOTION TO ALTER OR AMEND
A JUDGMENT RE JOINT AND SEVERAL LIABILITY

On August 18, 2008, the Court re-distributed a corrected judgment in this case to reflect the fact that Defendant Western Surety is not liable to GMW for attorney's fees in this matter. [Exhibit A, Docket No. 192-2] In addition to this correction, the Court added the following language at the end of the corrected judgment: "that judgment is joint and several." [Exhibit A] This language appears to be erroneous, as the judgment is not joint and several.

As reflected in the judgment, the liability of Kanag'Iq in this matter is different from the liability of Western. Western's liability is limited to damages that fall within the scope of the Miller Act. [Docket No. 168] See also, Mai Steel Service Inc. v. Blake Constr. Co., 981 F.2d 414, 417 (9th Cir. 1992). The court in Mai Steel explained:

Under the Act, “[e]very person who has furnished labor or material” used in a project may recover against a Miller Act surety. 40 U.S.C. § 270b(a). This includes any “subcontractor[] who deal[s] directly with the prime contractor,” as well as any sub-subcontractor who has supplied labor or materials to a subcontractor. Thus, [plaintiff] is entitled to recover against Aetna, the general contractor’s surety, in its capacity as both a subcontractor and a sub-subcontractor, *provided the costs it seeks to recover fall within the scope of the Miller Act.*

Id. (emphasis added, internal citation omitted) Western, unlike Kanag’Iq, is not liable to GMW for attorney’s fees with regard to Kanag’Iq’s state law counterclaims. [Docket 192-2] The Court concluded those costs do not fall within the scope of the Miller Act. [Docket No. 168] Because GMW is entitled to recover against Western only to the extent the recovery falls within the scope of the Miller Act, the judgment is not joint and several with respect to Kanag’Iq and Western. Defendants respectfully request the Court to correct the judgment to reflect that judgment is not joint and several.

DATED at Anchorage, Alaska this 26th day of August, 2008.

EIDE & GINGRAS, P.C.
Attorneys for Defendants
Kanag’Iq Construction Co., Inc. and
Western Surety Company

By: s/Thomas S. Gingras
Thomas S. Gingras
425 G Street, Suite 930
Anchorage, AK 99501
Phone: (907) 279-0930
Fax: (907) 279-0933
E-mail: tsgingras@egpalaska.com
Alaska Bar No. 7811098

Eide & Gingras, P.C.
425 G Street, Suite 930
Anchorage, Alaska 99501
(907) 279-0930 telephone
(907) 279-0933 fax

CERTIFICATE OF SERVICE

I am a legal secretary employed by the law firm of Eide & Gingras, P.C. That on this 26th day of August, 2008, I served

☒ Electronically

a true and accurate copy of the foregoing document upon the following counsel of record:

Sarah J. Tugman, Esq.
2509 Eide Street, Suite 4
Anchorage, AK 99503

EIDE & GINGRAS, P.C.

By /s/Donna Charter

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Eide & Gingras, P.C.
425 G Street, Suite 930
Anchorage, Alaska 99501
(907) 279-0930 telephone
(907) 279-0933 fax